

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

OP.No.275 of 2019
and
A.No.2583 of 2019

Mrs. Shanaz Fatima,
8-22-644 1 A 1, Road No 12, Sidra Heaven,
Banjara Hills,
Hyderabad – 500 034.

...Petitioner

Vs

1. M/s. Sundaram BNP Paribas Home Finance Limited
Represented by Mr.N.Udayakumar, Head Legal (Receivables)
46, Whites Road,
Chennai- 600 014.

2. Mr. Mohammed Asif
8-22-644 1 A 1, Road No 12, Sidra Heaven,
Banjara Hills,
Hyderabad -500 034.

...Respondents

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PRAYER: Original Petition is filed under Section 34 (2) (iii) of Arbitration and Conciliation Act 1996 praying to

a) set aside the Award dated 13.11.2018 passed by the Learned Sole Arbitrator Mrs.K. Elayarani in Arbitration Case No.KER/SHFL/07 of 2016;

b) Award costs against the 1st respondent throughout to the petitioner

For Petitioner : Mr. Prakash Goklaney
for M/s. S. Giritharan

For Respondents : Mr. P. V. Balasubtramaniam for R1

ORDER

The above OP has been filed challenging the Award passed by the Sole Arbitrator dated 13.11.2018.

2. Without going into the merits of the case, it has been pointed out to this court that the Arbitrator has in paragraph No. 5 of the Award extracted a counter which, according to the petitioner, has not been filed by the respondent.

3. A further reading of the Award particularly in paragraphs 7 and 8, which is extracted below would indicate that the counter has not been filed:

7. The authorized representative of the claimant, Mr. N. Udayakumar, AGM, and Head Legal receivables has appeared. The respondents not appearing in person or through their authorized representative even after receiving notices and failed to file their objections. As per Section 3 of Arbitration and Conciliation Act, 1996, the notice and proceedings were forwarded to the last known address of the respondents.

8. The object of referring a dispute to the Arbitration is due to its efficacy and speedy disposal of the referred matter. The respondents have not availed the given opportunities. Therefore this Tribunal has no other option but to proceed ex-parte and decide the claim of the

claimant on the basis of available documents placed before this Tribunal by virtue of Section 25 (C) of the Arbitration and Conciliation Act, 1996, which reads thus:

" a party fails to appear at an oral hearing or to produce documentary evidence, then the Arbitral Tribunal may continue the proceedings and make the arbitral award on the basis of evidence before it."

4. Therefore there appears to be discrepancy and confusion as to whether counter has been filed or not. Since the Award does not reflect the true facts in so far as it relates to the conduct of the proceedings, this Court is constrained to set aside the Award. Both counsel have agreed that fresh Arbitrator can be appointed and they have agreed and named Mr. S.S.P.Darwesh, Retired District, Address-No.15/33, Sreenivasa Street, Perambur, Chennai-11, Mobile No.7299767186, to be appointed as the

Arbitrator. The original records of the erstwhile Arbitrator which are summoned by this Court shall be returned to the Arbitrator who has been newly appointed, by the Registry.

5. The Arbitrator shall enter reference within a period of two weeks from the date of receipt of a copy of the order as well as original records. The entire proceedings shall be concluded within a period of two months thereof. The counter of the respondent shall be filed within a period of one week from the date of the first hearing of the Arbitrator. The petitioner herein shall not raise the issue of limitation since the period taken for prosecuting this OP will be excluded.

26.02.2020

mrn

Index : Yes/No

Speaking order/non-speaking order

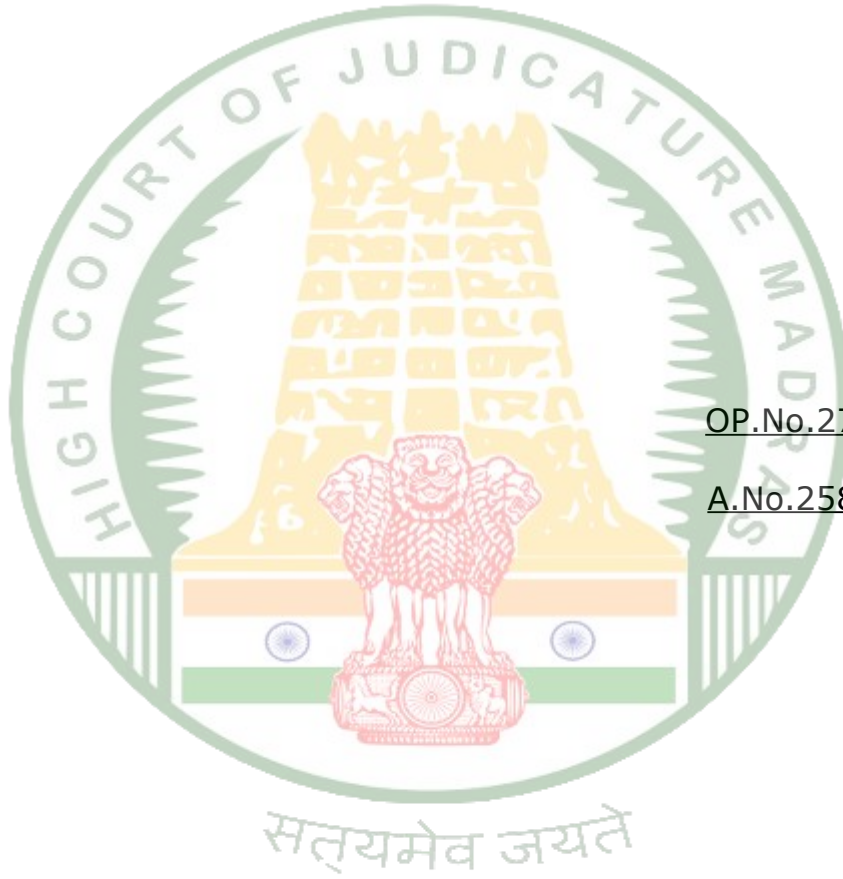
To,
M/s. Sundaram BNP Paribas Home Finance Limited
Represented by Mr.N.Udayakumar, Head Legal (Receivables)
46, Whites Road,
Chennai- 600 014.

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OP.No.600 of 2015

P.T.ASHA, J.,

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